

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-0697V

Filed: April 13, 2018

UNPUBLISHED

JOSEPH L. WHEATLEY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Tetanus, Diphtheria,
acellular Pertussis (Tdap) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Anthony P. Ellis, Ellis Law Group, PLLC, Louisville, KY, for petitioner.

Colleen Clemons Hartley, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On May 25, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) caused in fact by the tetanus, diphtheria, pertussis (“Tdap”) vaccine he received on August 15, 2016. Petition at 1, ¶¶ 2, 23. Petitioner also asserts that his shoulder injury “is consistent with . . . the proposed SIRVA criteria added to the Vaccine Injury Table.” *Id.* at ¶ 22. Petitioner further alleges that he has not received an award or settlement for his injury alleged to be vaccine caused. *Id.* at ¶ 24. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On April 12, 2018, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent "has determined that petitioner's medical course is consistent with a shoulder injury related to vaccine administration ("SIRVA") as defined on the Vaccine Injury Table." *Id.* at 6. Respondent further agrees that "based on the records as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act." *Id.* at 7.

In view of respondent's position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master